IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4015 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SAMIRKHAN FEROJKHAN PATHAN

Versus

COMMISSIONER OF POLICE

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Appearance:

1. Special Civil Application No. 4015 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 11-03-2004, by which the petitioner is detained as a "dangerous person" under PASA. Along with the said order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about five criminal cases pending against the petitioner. All these cases are cases of theft and the same are registered under Section 379 read with Section 114 of I.P.C. After considering aforesaid cases and the statement of two secret witnesses, the detaining authority has passed the order of detention, which is impugned in this petition.

2) Mr.Dave, learned advocate for the petitioner submitted that criminal cases registered against the petitioner are cases of theft. It is submitted by him that the activity of the petitioner of committing theft can be treated to be a breach of law and order situation but surely it cannot be said to be the breach of public order. It is submitted that a breach of law and order cannot be equated with breach of public order. It is submitted by him that so far as theft cases are concerned, there is enough provision in the Indian Penal Code to take care of such persons, who are indulging in theft of property. Therefore, according to him, it is not necessary to detain the petitioner under preventive detention. To substantiate his say, learned advocate for the petitioner has relied upon the judgement of Division Bench of this Court dated 3rd March, 1993 delivered in Special Civil Application No.1681/1992. In the aforesaid case, the detenu was subjected to 19 criminal cases under various provisions of I.P.C. In the aforesaid case, Division Bench of this Court has observed in para 5 and 6 as under :

"5. Learned counsel for the petitioner submits that the activities alleged against the petitioner would affect only maintenance of law and order and not public order. In her submission the detaining authority has lost sight of the distinction between the concept of 'law and order' and that of 'public order'. In this connection reference may be made to a decision of the Supreme Court in the case of Harpreet Kaur vs. State of Maharashtra, reported in AIR 1992 SC 979. After referring to its earlier decisions, in para 14 of the judgement the Supreme Court has observed as follows :

"From the law laid down by this Court, as noticed above, it follows that it is the

> degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order'. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of 'public order'. Whenever an order of detention is questioned, the courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to 'public order' or belong to the category of being prejudicial only to 'law and order'. An order of detention under the Act would be valid if the activities of a detenu affect 'public order' but would not be so where the same affect only the maintenance of 'law and order'. Facts of each case have, therefore, to be carefully scrutinised to test the validity of an order of detention."

Again in para 17 of the judgement the Supreme Court has observed that in each case the courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether the activities are prejudicial to maintenance of 'public order' or only 'law and order'.

6. Having regard to the aforesaid principles law laid down by the Supreme Court, in the instant case the court is required to scrutinise as to whether the activities alleged against the petitioner-detenu would affect maintenance of 'law and order' or maintenance of 'public order'. Be it noted that out of 19 cases registered against the petitioner, none of the criminal cases has been tried so far. All the cases are pending before the court. In 14 cases the allegation is of theft of gas cylinders. In one case the allegation of theft of V.C.R, and in two cases the allegation is of theft of colour T.V. In one case it is alleged that a motor cycle is stollen and in another case silver ornaments and

wrist watch are alleged to have been stollen. In all cases the detenu is alleged to have been in the offence of theft and other allied offences. By the very nature of the offences it would be difficult to say that these offences would affect the even tempo of public life. In 14 offences gas cylinders have been stollen. Of course this activity as alleged is repetitive in nature. But it is difficult to say that the extent and reach of the offence is such that it would create problem of maintenance of 'public order'. Similar is the position with regard to other five cases. As far as the statements of four witnesses are concerned, they refer to two separate incidents one is alleged to have taken place on June 1, 1992 at about 9.00 p.m. It has happened on account of non-payment of price of eatables taken from a hotel. Another incident is alleged to have taken placed on June 3, 1992 which is alleged to have taken place at about 3.00 p.m. on June 3, 1992, and the cause of the same is also non-payment of price of pan. Both these incidents at the most affect individuals and not the society at large. Applying the aforesaid principle laid down by the Supreme Court to the facts and circumstances of this case it is difficult to say that the detaining authority was justified in arriving at the satisfaction that the activities of the petitioner detenu were likely to adversely affect maintenance of 'public order'. All these activities either taken singly or cumulatively may at the most create some law and order problem. In this view of the matter the satisfaction arrived at by the detaining authority cannot be said to be genuine and it stands vitiated. Therefore, the petition is required to be allowed."

3) In the instant case, five cases of theft are filed against the petitioner and the statement of the secret witnesses are also in connection with the petitioners' tendency of committing theft. Considering the aforesaid judgement of the Division Bench and considering the fact that all these cases, registered against the petitioner, are cases of theft, it cannot be said that the petitioner is guilty of violating public order, as these cases can be considered to be the cases in violation of law and order on the part of the petitioner. Therefore, on the ground, that the

petitioner has not violated public order, this petition is required to be allowed.

4) At this stage, learned advocate for the petitioner made a voluntary statement that in case the petitioner is released on bail, he will not enter Dariapur as well as Kalupur area of Ahmedabad city upto 30th November, 2004. This voluntary statement is recorded and it is for the authority to monitor the same.

5) For the foregoing reasons, this petition is allowed. The order of detention dated 11-03-2004 is quashed and set aside. The detenu, Samirkhan Ferojkhan Pathan is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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